

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen

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Bill Number: SB 1841

Related Bills: See Prior Analysis

Telephone: 845-7478

Amended Date: April 19, 2004

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Electronic Monitoring Of Employees

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 20, 2004.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 20, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would allow employers to engage in electronic monitoring of employees after providing notice to the employees.

SUMMARY OF AMENDMENTS

The April 19, 2004, amendments would:

- Specify that "electronic monitoring" means the collection of individually identifiable information concerning employee activities or communications through the use of an electronic device.
- Remove the definitions of "employee" and "employer."
- Remove the requirement that an employer provide an annual notice of electronic monitoring to employees.
- Remove the language that would have allowed an employee to file a civil action against an employer that violated the provisions of this bill.
- Clarify that an employer would be allowed electronically to monitor an employee without prior notice when the employer has reasonable grounds to believe that the employee is 1) engaged in unlawful conduct, or 2) the electronic monitoring would produce evidence of an employees unlawful conduct and would be conducted in accordance with other applicable state and federal laws.
- Provide that the provision of this bill should not be construed as enhancing or diminishing an employee's reasonable expectation of privacy under state or federal laws.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

4/29/04

As a result of the amendments, the department has identified a technical consideration. For convenience, the Implementation Considerations from the department's analysis of the bill as introduced February 20, 2004, are included below. The remainder of the department's analysis of the bill as introduced still applies.

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

FTB is charged with collecting, maintaining, and protecting the privacy of taxpayer information. As such, FTB engages in extensive electronic monitoring of employee activities. FTB has established a notification practice that includes: 1) an annual confidentiality statement, 2) a security pamphlet, 3) an electronic security banner that is presented prior to any individual gaining network or system access, and 4) annual computer-based security training. If FTB is required to specifically identify the means, manner, and frequency of its electronic monitoring and the storage, use, and disclosure of the results, the systems and procedures to protect the privacy of taxpayer information and cashing of receipt could be compromised. For example, by providing the notice information required by this bill, employees could evade detection of unauthorized access to taxpayer information or theft of taxpayer checks. Additionally, an employee, or any other individual provided with such information, could use the monitoring information potentially to design and launch a successful and undetected system attack. The author may wish to consider providing an amendment that provides that it is not the intent of the bill to prevent a public agency from performing its statutorily mandated mission, such as protecting confidential taxpayer information.

The term "material change" in an electronic monitoring practice is subject to multiple interpretations, which may lead to disputes between employees and employers. Clarification of the author's intent about this provision may help in administering this provision of the bill.

TECHNICAL CONSIDERATIONS

The April 19th amendments removed the language of the bill that would have allowed an employee to file a civil action against an employer that violated the provisions of this bill. However, the cross-reference in paragraph (1) of subdivision (b) of this bill has not been revised to reflect that deletion.

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